

preparing an oil composition were independent and distinct and that a reference which anticipates one "would neither anticipate or make obvious the other inventions." Moreover, the PTO was of the view that claims to a food composition and claims to a method of preparing an oil composition "are capable of supporting their own patents." A copy of the restriction requirement issued on December 6, 2002 in U.S. 10/061,286 is attached. As the PTO has taken the position that a food product and a method of making an oil composition are patentably distinct, a conclusion of non-statutory obviousness-type double patenting is improper and this rejection should be withdrawn.

The rejection of claims 6-13 on the ground of non-statutory obviousness-type double patenting over claims 13-16 of U.S. 7,008,661 is respectfully traversed.

Claims 13-16 as well as claim 12 of U.S. 7,008,661 are directed to a food in which the oil/fat composition is as defined in claims 1 or 2 which are limited to 5-59.9 wt.% of diglyceride wherein 15-90 wt.% of the constituent fatty acids of the diglyceride are ω 3-unsaturated fatty acids having **less than** 20 carbon atoms. None of the compositions described in U.S. 7,008,661, including the embodiments demonstrated by its examples comprise any acyl group containing diglyceride in which ω 3 type unsaturated acyl groups having at least 20 carbon atoms are contained in an amount of from 15-89.5 wt. %.

In contrast, claims 6-13 of the above-identified application are defined by a diglyceride component in which 15-89.5% by weight of ω 3 unsaturated acyl groups have **at least** 20 carbon atoms. Thus, in the presently claimed invention the diglyceride is described in terms of ω 3 unsaturated fatty acids having **at least** 20 carbon atoms while in the claims of U.S. 7,008,661, the claims are defined by a diglyceride in which the ω 3 unsaturated fatty acid has **less than 20 carbon atoms**. Since the prior art describes a composition having **less than 20 carbon atoms** it would not have been obvious to claim an ω 3 unsaturated acyl group content having **at least 20 carbon atoms**. Claims 6-13 are not obvious over claims 12-16 of

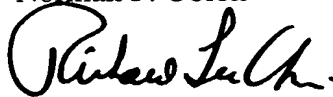
Application No. 10/761,358
Reply to Office Action of April 19, 2006

U.S. 7,008,661. Withdrawal of the rejection under the ground of non-statutory obviousness-type double patenting is respectfully requested.

Applicants submit that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

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